DOCUMENT RESUME

ED 260 495 EA 017 922

AUTHOR Hansen, Kenneth H.
TITLE Tuition Tax Credits: Current Status and Policy Issues.
INSTITUTION Northwest Regional Educational Lab., Portland, OR. Northwest Center for State Educational Policy Studies.
PUB DATE Mar 80
NOTE 8p.
PUB TYPE Viewpoints (120) -- Information Analyses (070)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Constitutional Law; Court Litigation; Educational Change; Elementary Secondary Education; Parochial Schools; Policy Formation; Public Education; State Church Separation; State Departments of Education; *Tax Credits; *Tuition

ABSTRACT

Although providing tuition tax credits to parents of children in private schools could provide several social benefits, several difficulties stand in the way of adopting such a policy. The major difficulty is that tuition tax credits stand a good chance of being declared unconstitutional on First Amendment grounds. Tuition tax credit proposals have gone down to defeat in every state referendum in the past decade, yet additional proposals remain pending. Issues of particular concern to state education agencies are what purposes tuition tax credit proponents hope to achieve, what policies will be required to address those purposes, and how the adoption of a scheme for tuition tax credits would affect the delivery and cost of education. (PGD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED260495

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.
Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
M. Margaret Rogers
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

TUITION TAX CREDITS
Current Status and Policy Issues

BEST COPY AVAILABLE

by
Kenneth H. Hansen
Senior Associate
Northwest Center for State Educational Policy Studies

Northwest Regional Educational Laboratory
710 S.W. Second
Portland, Oregon 97204

March 1980

EA 017 922

TUITION TAX CREDITS
Current Status and Policy Issues

Proposals to reimburse parents for a portion of the cost of sending their children to private schools by providing tuition tax credits or similar rebates from public funds have wide appeal. In addition to providing a very direct form of tax relief, such credits, proponents maintain, would promote family freedom of choice regarding where and how children were educated; they would encourage diversity as opposed to uniformity in education; they would force schools to shape up--produce what the parents demand--or close up; and they would serve as a deterrent (or at least a solemn warning) to "big government" in general.

There are many foreseeable difficulties with these popularly attractive and apparently simple proposals, the most serious of which is that they are apparently--and many would say patently--unconstitutional. Any serious consideration of tuition tax credits must therefore first require an examination of the fundamental constitutional issue.

The Constitutional Issue. The constitutional question raised by the tuition tax credit proposal stems from one simple sentence embedded in the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This seemingly straightforward prohibition has been exceptionally difficult for the courts to interpret clearly and consistently, but a series of leading cases extending back over several decades has ultimately established two basic principles which the United States Supreme Court uses to determine whether or not a particular practice or statute violates the spirit of the First Amendment prohibition against establishing a religion or preventing its free exercise.

The first of these principles is the "primary purpose and effect" test: regardless of the reasons advanced for the suspect practice, and regardless of the ostensible purpose of the statute in question, what is its real purpose and what will it really accomplish? The second test: does the practice or statute result in an "impermissible degree of entanglement" between church and state? Distilling out these two basic principles from the often superfluous or tangential issues which are argued before the Court has been accomplished through consideration of a long series of complex cases.

Historic ("landmark") Cases. Most of what are generally considered to be the "landmark" cases involving religion and public education have not dealt directly with tuition tax credits at all, but they have provided the framework within which the Court has developed the primary-purpose-and-effect and the excessive-entanglement tests which would seem to apply directly to the tax credit issue. These cases (which will be named, only, rather than discussed in any detail) have led the Court to enunciate the "child-benefit" theory, which decrees that if the major purpose of the law or practice in question is to benefit the child, rather than the parent or the religious school, such a child-oriented "primary purpose and effect" falls within the bounds of the constitutionally permissible. Hence, Cochran permitted the furnishing of textbooks to parochial school students, and Everson permitted using publicly-funded buses to get youngsters to these schools. The Court, on the other hand, found "excessive entanglement" in released-time programs for religious instruction in the McCollum case, but did not find that entanglement to an impermissible degree in the Zorach case, when the classes were held away from the school grounds and the public school did not monitor attendance.

However, when proponents of more direct aid to parochial schools came up with plans to provide subsidies to parochial schools or to parents sending their children to these schools in Pennsylvania (Lemmon v. Kurtzman) and in Rhode Island (DeCenscio v. Robinson) with the argument that such aid was merely an extension of the child-benefit theory, the Court found these plans in violation of both of the basic principles of "primary purpose" and "entanglement."

In subsequent cases, even more directly related to tuition tax credits, the Court continued to find the various proposals constitutionally offensive. In Essex v. Wolman, the Court maintained that "payment to the parent for transmittal to the denominational school does not have a cleansing effect or somehow cause the funds to lose their identity as public funds." Although in another Ohio case with a similar name, heard a few years later, the Court did permit some forms of service to parochial schools at state expense, they still held that cash payments or rebates to parents were not really "child benefits," a position which they had very clearly enunciated a few years earlier in a New York case, Committee for Public Education v. Nyquist.

Recent Cases. In two very recent cases specifically concerned with tuition tax credits, the courts have flatly declared state laws unconstitutional on First Amendment grounds: the U.S. District Court on November 16, 1979, in Rhode Island AFT v. Norberg, and the Supreme Court on May 29, 1979, in the Byrne v. Public Funds for Public Schools case originating in New York. (However, in a development not very well understood by legal scholars, concurrent with these cases the Federal District Court in Minnesota did approve a state statute that appeared to permit almost the same kind of tax credits found unconstitutional elsewhere; for technical reasons, the case was not appealed to the Supreme Court.)

State-Level Referenda. In states where proposals for some form or another of tuition tax credits have reached the ballot through the referendum route, the past decade has seen nothing but defeat for the proposals. Michigan and Maryland voters have defeated such proposals twice each in the last ten years, and defeat has come on similar proposals once in each of several other states--Missouri, Nebraska, Idaho, Oregon, Washington, and Alaska. In no state have these credits been approved when put to a vote of the people.

Proposals Pending. The one proposal for tuition tax credits which would have national impact is the much discussed Moynihan/Packwood bill which failed to secure Congressional approval in 1979 but which is still being actively advanced by its proponents. Its ultimate fate is, at best, uncertain, but there are other similar proposals being made at the Congressional level. It is an idea which has a compelling attractiveness to its many supporters: constitutional or not, it is an idea which dies hard.

California has been the scene of recent activity in support of tuition tax credits at the state level, where a companion piece to the Coons/Sugarman voucher plan has, like that proposal, struggled unsucessfully for a place on the ballot. Seasoned observers of the California political scene do not give any of these plans much chance of securing enough signatures to be placed on the ballot this year--but the proposals will almost surely be back on the referendum scene another year.

In the current (1980) legislative year, at least one state has a bill ready for introduction (Idaho's H.B. 442), and other states are reported to be currently considering--or thinking about or talking about--tuition tax credit legislation.

Current Basic Policy Issues. Although the issue of constitutionality is one which seems paramount, and the one which commands the major portion of the attention of those concerned with tuition tax credits, the constitutional issue does not appear to be of signal importance to policy-makers in state education agencies simply because it is beyond their control and only marginally subject to their influence.

The more salient issues for SEAs are reported to be these: First, what is the basic purpose of those who advocate tuition tax credits? Second, what would the adoption of a scheme for tuition tax credits do to education, with most particular reference to its cost and to its efficacy?

Before any policy alternative for dealing with the tuition tax credit matter can be effectively set forth, it will be necessary to get a handle on what the proponents or supporters really are after. Probably it's a number of things, including doubtless mixed motives and confused objectives, but how a SEA responds will be in part a function of the purpose as seen by the advocates. Is the motivation really "freedom of choice," or is it income redistribution? Is it an extension of the child-benefit theory, or is it an expression of a newer parent-benefit theory? Is it essentially a spillover from the tax-cutting mood so dramatically addressed by Proposition 13? Perhaps the motivation is primarily dissatisfaction with public education; alternatively or additionally, it may represent primarily a negative reaction to any enterprise that is seen to be controlled by "big government."

But whatever the motivation of the proponents, it is possible to do some calculation of the cost of tuition tax credits, relying in part on the not-quite-parallel proposals for various forms of voucher systems. In California, it has been estimated that enactment of the Coons/Sugarman proposal for educational vouchers could cost the state an additional $350-500 million per year even if only 20% of eligible children participated.[5]

The Moynihan/Packwood proposal for tax credits has an estimated price tag of 5.3 billion in additional federal funds--all of it going to private schools on top of what they are now getting from various federal assistance programs, thus bringing total federal support for private school students to a per-pupil figure that would be four times that spent by the federal government on public school students. In any case, there would be an obviously serious dilution of support for public schools without really lessening costs for the taxpayer, the only ultimate source of any tax funds.

Serious consideration would need to be given not only to costs of tuition tax credits, but much more importantly to the educational effects. There would be the administrative problems (not to say administrative nightmares) of making sure that, since public funds were being used for the child's education, the parents knew what they were buying--any decent regard for consumer interests and for public accountability would necessitate the establishment of a relatively elaborate system of parental counseling and of governmental monitoring of educational offerings.

Much more serious would be the problems of the introduction of marked segregative effects in the school system if parents were encouraged by the availability of tax credits to take their children out of public schools and place them in selected single purpose schools of their own choice. Increased diversity, proclaimed as one of the great goals of both voucher and tax credit schemes, could well become mere divisiveness.

Finally, there would be problems of the quality of the educational experience itself. A variety--even a plethora--of smallish schools, each devoted to satisfying parents whose own wishes, however sincere, might be singularly parochial (in the social and intellectual as well as the religious meaning of the word) would need to receive kinds of help not now on the agendas of most SEAs if the public purposes of education were to be adequately served.